

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COZUMEL LEASING, LLC,

Plaintiff,

V.

INTERNATIONAL JETS INC., a Washington corporation, DAVID KILCUP, an individual, ALDEN ANDRE, an individual, and AIRCRAFT SOLUTIONS LLC, a Washington limited liability company,

Defendant.

CASE NO. 16-5089 RJB

ORDER ON MOTION TO
AMEND THE AMENDED
COMPLAINT

This matter comes before the Court on Plaintiff's Motion for Leave to Amend Complaint.

Dkt. 143. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

This case arises out of Plaintiff's purchase of a 1977 Cessna Citation ISP ("aircraft") from International Jets, Inc. ("International Jets") that Plaintiff asserts was not airworthy and required thousands of dollars to repair. Dkts. 1 and 48. Plaintiff now moves for leave to file a second amended complaint. Dkt. 143. For the reasons provided below, the motion (Dkt. 143) should be denied.

1 **I. BACKGROUND FACTS AND PROCEDURAL HISTORY**

2 The background facts are in the April 11, 2018 Order on Motions for Summary Judgment
3 (Dkt. 157, at 2-16), and are adopted here by reference.

4 This case was originally filed in August 21, 2015. Dkt. 1. After voluntarily dismissing some
5 claims with prejudice (Dkt. 118), Cozumel made claims in its Amended Complaint for: (1)
6 negligent misrepresentation against all Defendants; (2) violation of the Washington Consumer
7 Protection Act (“CPA”) against all Defendants, (3) negligence against Aircraft Solutions LLC
8 (“Aircraft Solutions”); (4) breach of contract against International Jet, (5) breach of express and
9 implied warranties against International Jets and Kilcup, (6) breach of fiduciary duty against
10 International Jet and Kilcup, and (7) fraud and fraudulent inducement against International Jet
11 and Kilcup. Dkt. 48. Cozumel seeks damages, costs, and attorney’s fees. *Id.*

12 On October 19, 2017, on the parties’ stipulated motion, the Court permitted a lengthy
13 extension of the deadline to file dispositive motions (from November 11, 2017 to March 3,
14 2018); the trial date and other pre-trial motions’ deadlines were also reset. Dkt. 94. This was the
15 parties’ second motion for an extension of the case deadlines. Dkt. 90.

16 The parties timely filed cross motions for summary judgment (Dkts. 101, 107, 110, and
17 112). On April 11, 2018, Defendant Alden Andre’s motion for summary dismissal of all claims
18 asserted against him was granted; and the summary judgment motions of Plaintiff, International
19 Jets, David Kilcup, and Aircraft Solutions were granted, in part, and denied, in part. Dkt. 157.
20 Plaintiff’s claims for negligent misrepresentation and negligence against Defendant Aircraft
21 Solutions and claims for breach of contract and breach of express and implied warranties against
22 International Jets and Kilcup remain for trial.

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1 After the above mentioned cross motions for summary judgment were filed, but were not
2 yet ripe for consideration, Plaintiff filed the instant motion for leave to amend his amended
3 complaint. As a basis for its negligent misrepresentation, fraud and fraudulent inducement
4 claims against International Jets and Kilcup, Cozumel seeks to add Kilcup's representation to
5 David Fallang (Cozumel's representative), that Aircraft Solutions was a Sierra Industries, Inc.
6 certified repair shop. Dkt. 143. All Defendants oppose the motion. Dkts. 154 and 156. Plaintiff
7 reply (Dkt. 160) was timely filed after the order on the motions for summary judgment (Dkt.
8 157) was issued.

9 Motions in limine and the pretrial order have been filed. Dkts. 140, 142 and 161. The
10 case is set to go to trial in less than a month - on May 14, 2018.

11 **II. DISCUSSION**

12 Under the rule of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938), federal courts sitting in
13 diversity jurisdiction, as is the case here, apply state substantive law and federal procedural law.
14 *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415, 427 (1996).

15 **A. STANDARD FOR MOTION TO AMEND COMPLAINT**

16 Under Fed. R. Civ. P. 15 (a)(2), "a party may amend its pleading only with the opposing
17 party's written consent or the court's leave. The court should freely give leave when justice so
18 requires." A motion to amend under Rule 15 (a)(2), "generally shall be denied only upon
19 showing of bad faith, undue delay, futility, or undue prejudice to the opposing party." *Chudacoff*
20 *v. University Medical Center of Southern Nevada*, 649 F.3d 1143 (9th Cir. 2011).

21 **B. MOTION TO AMEND**

22 Plaintiff's motion for leave to amend complaint (Dkt. 143) should be denied. Plaintiff's
23 motion was filed with undue delay and is futile. Plaintiff's motion was filed late in the process –
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1 it is just four weeks before trial is set to start. The motion was filed two months after Alden
2 Andre's January 24, 2018 testimony, upon which the proposed amendment is allegedly based.
3 Further, the motion is futile as to the negligent misrepresentation, fraud, and fraudulent
4 inducement claims for the reasons provided in the order on the motions for summary judgment
5 (Dkt. 157, at 21 and 32). Plaintiff's motion for leave to file a second amended complaint (Dkt.
6 143) should be denied.

7 **III. ORDER**

8 Therefore, it is hereby **ORDERED** that:

9 • Plaintiff's Motion for Leave to Amend Complaint (Dkt. 143) **IS DENIED**.

10 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
11 to any party appearing *pro se* at said party's last known address.

12 Dated this 16th day of April, 2018.

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15 ROBERT J. BRYAN
16 United States District Judge
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